IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 13120 of 2007(J)

OS.159/2005 of PRL.MUNSIFF COURT, CHERTHALA

PETITIONERS:

1. **V.R.PRASAD, SON OF VELAYUDHAN, JOVIYAL BUNGALOW, CHERTHALA NORTH MURI, DO. VILLAGE.**

2. **THANKAMANI AMMA, D/O BHAVANI AMMA, DO. DO.**

BY ADV. SRI.V.GIRI

RESPONDENTS:

T.D.PADMANABHAN S/O DAMODARAN, KANNIMITTAM, WARD NO.27, CHERTHALA.

BY ADV. SRI.G.GOPAKUMAR (CHERTHALA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 13120/2007 J

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE IA NO. 3141/2006.

EXT.P2. COPY OF THE COUNTER FILED TO IA 3141/2006.

EXT.P3. COPY OF THE ORDER OF MUNSIFF DT. 09/02/2007.

True copy

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M.N.KRISHNAN, J.

WP(C)No.13120 OF 2007 J

Dated this the 28th May, 2007.

JUDGMENT

This writ petition is filed to quash Ext.P3 order passed in O.S.159/2005. The plaintiffs moved an application, I.A.3141/06 for the issuance of a commission in order to identify the suit property with respect to the title deeds and submit a plan and report. This was done at a time when the evidence was already over and there was only a prayer with respect to submit a plan regarding the plaint schedule property which is only 5.5 cents. Learned Munsiff found that in order to have a proper disposal of the matter there should have been a request to locate the 5.5 cents of property after identifying and measuring the entire 1 acre and 55 cents claimed by the plaintiffs. The suit is one for injunction and the rival claims of the parties are depending upon the rival title deeds relied upon by them. In order to ascertain and find out whether 5.5 cents of property which is in dispute belongs to the plaintiffs, it is imperative to get a survey plan of the property taking into consideration the entire property which they had obtained by virtue of a document or in otherwords the crux of the issue is whether 5.5 cents which is involved in the suit is covered by 1.55 acres claimed by

the plaintiffs under a document. The defendant is claiming property by virtue of a separate document. So, it will be only just and equitable that the properties are measured, identified and located with respect to the respective title deeds claimed by them and it appears that such a plan and report is necessary for a proper disposal of the matter and to resolve the controversy between the parties. Therefore, the order impugned is set aside and the writ petition is allowed with the following directions:-

i) The Court below is directed to issue a commission to identify and locate the plaint schedule property and also to direct the Commissioner to find out whether 5.5 cents of properties claimed by the plaintiffs is located in the larger extent of 1.55 acres. The Commissioner can also measure the property of the defendants with respect to the title deeds on which they rely.

ii) Both parties may be permitted to file work memos and ascertain facts which are necessary and relevant for the purpose of a proper determination of the case.

iii) Parties are directed to appear before the trial court on 26.6.2007.

M.N.KRISHNAN
Judge

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